

Directors Guild of America, Inc.

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November 14, 2002

The Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

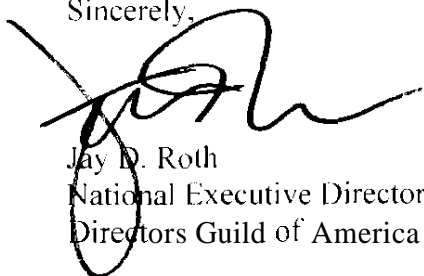
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Directors Guild of America is pleased to have the opportunity to comment on digital broadcast copy protection, (MB Docket No 02-230). This is an issue of great importance to our members, as you will see from our attached submission to the FCC's proposed rulemaking on this matter.

Sincerely,



Jay D. Roth
National Executive Director
Directors Guild of America

Cc: Martha Coolidge
President, Directors Guild of America
Ed Sherin
National Vice President, Directors Guild of America

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Before the
Federal Communications Commission
Washington, D.C 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Digital Broadcast Copy Protection)
)

MB Docket No.02-230

November 14,2002)

To: The Commission's Secretary
Office of the Secretary
Federal Communications Commission
c/o 236 Massachusetts Avenue NE
Suite 110
Washington, DC 20002

From: Directors Guild of America
c/o Jay D. Roth
7920 Sunset Boulevard
Los Angeles, California 90046

Response of the Directors Guild of America
to Notice of Proposed Rulemaking Dated August 9,2002

The Directors Guild of America (DGA) represents 12,500 directors and members of the directorial team who work in feature film, filmed/taped/and live television, commercials, documentaries, and news. Our members include Film and Television Directors, Unit Production Managers, Assistant Directors, Associate Directors, Technical Coordinators, Stage Managers and Production Associates. Our directors, along with their creative team, are the individuals who create the movies and television programming seen daily by millions of Americans—and even more millions around the world.

To date we have not directly participated in the discussions between the studios and the technology/consumer electronics industries. However, DGA members are very real stakeholders in the outcome of FCC's ruling on Digital Broadcast Copy Protection and the DGA submits these brief comments in support of a government mandated broadcast flag, to protect copyrighted works. These comments—which speak to the specific concerns of the Directors Guild—are a supplement to our also joining the longer response submitted by the Motion Picture Association of America.

The protection of our members' economic rights has been a paramount concern to this Guild since our founding by directors such as John Ford, Howard Hawks, and King Vidor in 1936. Our directors' economic and creative rights are dependent on the premise that their work will be protected from copyright infringement — whether from unauthorized editing of their work, or unauthorized copying and reuse that makes financial compensation of residual revenues impossible to obtain. Residual payments are contractually required under the DGA's basic collective bargaining agreement with the Association of Motion Picture and Television Producers and the broadcast networks. Residuals are the fees paid to our members for the reuse of their motion pictures or television productions on free and pay television, DVD and videocassette, both domestic and international. They are in effect economic rights, which adhere to their work. In the age of digital broadcast transmission those rights are at serious risk.

DGA represents members whose compensation and pension benefits depend on residual revenues from the works they create. Residual income from the rebroadcast of high-end film and television productions is critical to our members because it ensures that their economic interests are protected when they are remunerated for the reuse of a work they created. In 2001, the Guild collected and distributed in excess of \$171 million to our members in residual payments. This \$171 million represents earnings that are bread and butter income to our members. The importance of residual payments flows from the basic economic underpinnings of our business. The motion picture and television industry operates on the concept of freelance employment, meaning that **our** members are hired by a variety of different employers on a production-by-production basis. In other words, our members cannot count on a regular paycheck. What they can count on is ongoing income in the form of financial payment (residuals) when works they have created are re-broadcast in supplemental markets.

The residual system originated in the motion picture and television industries in order to provide appropriate compensation to the creative professionals whose contributions to the product are so fundamental that it cannot otherwise be produced. Further, this industry operates on a business model in which virtually all of the human resources are engaged on a temporary basis. Residuals therefore address the issues of: 1) the right to economic remuneration to our members for their unique participation in the creation of the picture or television production, 2) maintaining their economic participation in income generated by the exploitation of their works into the future and 3) establishing economic stability in a perennially freelance employment environment. Residuals provide a legal, binding and practical framework within which our members and those who hire them can operate to the mutual benefit of each. Apart from their economic importance, residuals establish the right of our members to participate in the "fruits" of their work.

On a secondary level, residual income also ensures the financial strength of our members' pension and health plan. During 2001, the \$171 million distributed includes residual payments to the Guild's basic pension plan of close to \$30 million—a figure that represents reuse only in videocassette, pay and free TV. Again, in 2001 individual residual contributions to our pension plan (both employee and employer) totaled close to

54 million. The DGA's basic pension plan currently has \$ 522 million in assets ---62% of those receipts come from residual payments. Finally, again in 2001, contributions related to residuals to our health plan equaled over \$3 million. Revenues generated by residual payments are critical not only to our members, but also to their families. The DGA supplemental pension plan covers close to 12,000 DGA members and their families and our health plan covers close to 5,000 of the same. In sum since 1960 the **DGA** has collected \$2.5 billion in residuals.

As you can see from the magnitude of the 2001 figures alone, unauthorized copying and redistribution of our members' work takes necessary income directly out of our members' pockets and their retirement plans. The ability to earn a living and the viability of their retirement plan are paramount issues to our members and their families, as they are to all Americans. We cannot afford to have their livelihoods weakened by individuals—or institutions—who think downloading and sharing our members' copyrighted work is their "right" without regard to the very real economic consequence of their action on those who created the work it might be said they so "admire." Nor do we want to face a dwindling pension plan unable to fully provide for our members because they are no longer properly compensated for the airing of their work in supplemental markets.

While we recognize that there has always been piracy, the digital broadcast of content is transmitted in the clear, and thus—with the Internet—provides a quantum leap in the potential for unauthorized redistribution. That is why the threat to our members' economic livelihoods is so much greater than anything that has come before. Ever growing numbers of individuals are uploading and sharing digital files with millions of users—with no remuneration to our members, the creators. Moreover, digitally broadcast programming is susceptible to unauthorized alterations, allowing individuals to alter at will our directors' work. This completely undermines our members' rights, as filmmakers, to control the content of works into which they have not only put their creative vision but years of their life.

High quality film and television created by our members exists because it is part of the market foundation on which our industry was built and operates. It depends on an economic model that relies in large part on profits from resale rights both in the United States and abroad. As we have noted above our members depend on the existence of that revenue stream for their compensation and their ability to produce new works. Quite simply, if our members are not justly paid—because the content they have made is not protected— they will not have the incentive to create.

Digital broadcasts—if properly protected—could represent a new market that would greatly benefit our members. However, the failure to develop and implement adequate security—as proposed with the "broadcast flag"—is likely to slow the implementation of digital broadcasting, thus jeopardizing this new market. Copyright holders will be properly reluctant to transmit digital broadcasting if they believe that their property will be routinely pirated, thus foreclosing potential new opportunities for our members and denying consumers access to digitally broadcast programming.

Since copyright protection is important to our members and since the Constitution establishes such protection as an essential federal obligation, we urge the Federal Communications Commission to assure that digitally broadcast movies and television (high-end content programming) are protected against unauthorized downloading, uploading and/or alteration. At present an FCC mandate that an ATSC flag be embedded in consumer electronic devices which will be applied to high-end programming appears to be the most appropriate recourse. We call for this federal intervention because without it, the affected industries (copyright holders and the technology industry) appear unlikely to reach an agreed upon solution. If the affected industries can develop an agreed upon solution then the FCC's role should be to codify and enforce its implementation. However, we would also ask that should the FCC determine to await the outcome of negotiations, the federal government establish a deadline for completion of these negotiations and intervene if an agreement is not reached.

We welcome the opportunity to provide the perspective of the critical interests of the film artists — separate and apart from the copyright holders — in the outcome of your ruling. We thank you for your consideration.

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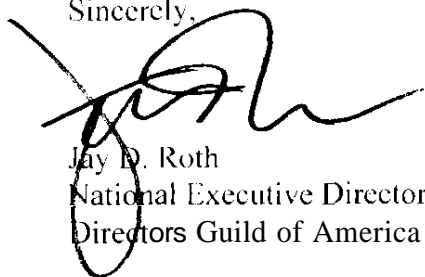
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